

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

Case No. 1:24-cv-22849-Civ-Ruiz

NERLYNE AUGUSTE,

Plaintiff,

vs.

DESH INCOME TAX &
IMMIGRATION SERVICES, LLC,
and MAGDALA NICLASSE,

Defendants.

DEFENDANTS' COUNSEL'S MOTION TO WITHDRAW

Christopher C. Sharp, Esq. and SHARP LAW FIRM, P.A., in accordance with Rule 4-1.16 of the Rules Regulating the Florida Bar, hereby file this Motion to Withdraw as counsel of record for Defendants, DESH INCOME TAX & IMMIGRATION SERVICES, LLC, and MAGDALA NICLASSE in this matter. As grounds for this Motion, movant states as follows:

Introduction

Plaintiff's Complaint raising FLSA claims was served on September 3, 2024 and the undersigned entered his Notice of Appearance for Defendants on September 24, 2024. Defendant's Answer and Affirmative Defenses [Doc. 15] were served October 1, 2024, the parties' Joint Scheduling Report [Doc. 17] was filed October 8, 2024. The Court's Order Setting Jury Trial, Requiring Mediation, and Referring Certain Matters to Magistrate Judge [Doc. 18] was entered October

9, 2024, which set the case for trial during the Court's two-week trial calendar beginning on June 2, 2025.

Plaintiff filed a Motion for Partial Judgment on the Pleadings [Doc. 21] on October 24, 2024 and on that same date, the Court entered a Settlement Conference Order [Doc. 22], scheduling a settlement conference before Magistrate Judge Louis for November 12, 2024 at 10:00 a.m. The parties' Joint Notice of Mediator Selection and hearing Date [Doc. 23] was filed October 29, 2024 and on October 30, 2024, the Court entered an Order Scheduling Mediation for January 29, 2025, with Neil Flaxman, Esq. [Doc. 24].

The parties attended the settlement conference on November 13, 2024, which was continued, and by Paperless Order entered January 5, 2025 [Doc. 37], the Court denied the Motion for Partial Judgment on the Pleadings.

On December 11, 2024, Plaintiff served written discovery requests consisting of requests for production and interrogatories to each of the Defendants and Defendants served their initial written discovery on December 16, 2024. Under the current scheduling order, all discovery is to be completed by February 4, 2025, mediation is to be completed by February 11, 2025 and all pretrial motions are due on or before February 18, 2025.

Grounds for Motion to Withdraw

Pursuant to Rule 1-4.16(a) of the Florida Bar Rules of Professional Conduct, a lawyer may decline or terminate representation of a client where "the representation will result in an unreasonable financial burden on the lawyer or

has been rendered unreasonably difficult by the client.” See Rule 1.4.16(b)(2) and (4).

The undersigned and his law firm seek to withdraw from further representation of Defendants in this case, because Defendants have been unable to meet their financial obligations under the terms of their retainer agreement and have additionally failed to respond to multiple requests to provide the necessary information and documents for the undersigned to respond to Plaintiff’s initial discovery requests served December 11, 2024. By failing to meet their obligations under the terms of the retainer agreement, Defendants have created an untenable situation that has placed an unreasonable financial burden on the undersigned and his law firm and made it unreasonably difficult to continue with the representation.

Prior to filing this Motion to Withdraw, the undersigned made numerous attempts to resolve these issues over a period of several weeks by advising Defendants via telephone, multiple emails and text messages that although he would continue the representation for the time being, he would be forced to withdraw from the case if they were unable to meet their financial obligations and timely provide the requested information for their discovery responses that were due January 13, 2025. When Defendants still failed to meet their obligations under the terms of the retainer agreement after being given almost a month to do so, the undersigned advised them again of the reasons he could no longer represent them and provided Defendants with a copy of this motion before

it was filed. Defendants were further advised that if this motion to withdraw is granted, the corporate Defendant must be represented by an attorney in federal court, and they will therefore need to retain new counsel forthwith.

To further protect Defendant's interests in this matter, if the motion is granted, the undersigned respectfully requests that all current deadlines in the case set forth in the Court's scheduling order [Doc. 18] be continued for not less than thirty (30) days and the mediation currently scheduled for January 29, 2025 be postponed, so that Defendants have a reasonable opportunity to retain new counsel in this matter, following which the Court can consider any appropriate modifications of the remaining pretrial deadlines or the trial date contained in the scheduling order.

Conclusion

Based on the foregoing, the Court should grant the Motion to Withdraw as Counsel for Defendants, and enter an order relieving Christopher C. Sharp, Esq. and SHARP LAW FIRM, P.A. from further responsibility for representing the Defendants in these proceedings, continuing all pretrial deadlines for not less than thirty (30) days and giving Defendants thirty (30) days to retain new counsel.

Respectfully submitted,

Christopher C. Sharp

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Counsel for Defendants

Dated: January 13, 2025

Certificate of Service

I hereby certify that on January 13, 2025, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: Christopher C. Sharp
Christopher C. Sharp, Esq.

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